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December 14, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington D.C. 20554

RE: NSD-L-97-42 In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Cods 412,610, 215 and 717 (CC Docket No. 96-98)

Dear Secretary Salas:

Enclosed for filing in the above matter please find one original and five copies of the New Hampshire Public Utilities Commission's Petition for Reconsideration of the FCC's September 28, 1998 Opinion. Please be kind enough to stamp one copy and return it to us in the enclosed envelope.

Sincerely,


E. Barclay Jackson, Esq.

EBJ/hs
Encl.

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling and)	
Request for Expedited Action on)	NSD File No. L-97-42
July 15, 1997 Order of the Pennsylvania)	
Public Utility Commission Regarding)	
Area Codes 412, 610, 215 and 717)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
of 1996)	

PETITION FOR RECONSIDERATION

The New Hampshire Public Utilities Commission (NHPUC) respectfully requests that the FCC reconsider its September 28, 1998 Memorandum Opinion and Order on Reconsideration (Opinion) in the above-captioned matter. The NHPUC requests that the FCC (1) remove the

condition in Paragraph 24 that requires a state commission to decide upon a specific form of area code relief before it is allowed to impose central office code (NXX) conservation measures, (2) authorize state commissions to implement NXX conservation measures that do not interfere with the FCC's guidelines for traditional area code relief, and (3) clarify the authority state commissions have to order return of NXXs. The NHPUC joins in the arguments presented in the Petitions for Reconsideration by the Maine Public Utilities Commission (MPUC) and the Massachusetts Department of Telecommunications and Energy in this matter.

The Rhode Island Public Utilities Commission joins New Hampshire in requesting the FCC to reconsider its Opinion. Although the specific facts differ somewhat, Rhode Island agrees that consumers will benefit by a number conservation process that avoids the premature imposition of new area codes.

I. BACKGROUND

The FCC's Opinion, issued September 28, 1998 in response to a petition for declaratory ruling on a Pennsylvania Public Utility Commission order regarding four Pennsylvania area codes, concluded *inter alia* that the following restrictions apply to states' ability to address area code exhaust. (1) State commissions are authorized by the FCC to order NXX code conservation measures only in conjunction with traditional area code relief decisions and only if the industry is unable to reach consensus on a rationing plan to extend the life of an area code. (2) States may implement experimental number conservation efforts only if the FCC's Common Carrier Bureau approves such efforts and grants appropriate additional authority to the states.

The FCC's Order made clear that it retains sole authority for numbering administration, including NXX code allocation and assignment. The FCC confirmed states'

limited authority to introduce new area codes via geographic split, boundary realignment, or overlay¹. The FCC discussed three main issues: (1) a need for national uniformity and parity in number conservation methods, (2) a need to insure that states address area code relief in timely fashion, and (3) the explicit assignment of numbering authority to the FCC and its appointed North American Numbering Plan Administrator (NANPA).

II. ARGUMENT

A. The FCC's Opinion is contrary to the public interest as it causes the imposition of new area codes prior to actual need, thus burdening customers with unnecessary costs and confusion.

On November 6, 1998, NANPA officially declared New Hampshire's 603 area code in "extraordinary jeopardy." As a result, New Hampshire NXXs are now being rationed at a rate of 3 per month in order to insure the area code is not exhausted before a new area code can be introduced, which is projected for the fourth quarter of 2000. If the NHPUC had been authorized to impose conservation measures which could delay jeopardy, New Hampshire might never have needed to plan for a new area code. Certainly the exhaustion of area code 603 would be delayed by some years, during which time technology may very well obviate the need for new area codes. The NHPUC suggests that its close understanding of state conditions will enable better allocation of whatever new numbering resource may be developed. In light of the experience with new area codes of our sister state Massachusetts, recounted in its Motion for Reconsideration filed October 27, 1998, the NHPUC sees a need for state conservation authority.

¹A new area code can be implemented via an overlay, assigning the new area code to new customers throughout the current area code, or via a geographic split, assigning the new area code to all of the customers within a specific geographic region of the state. A boundary realignment shifts the boundary between two adjacent area codes, inapplicable to New Hampshire which has only one area code.

State commissions are in the best position to develop NXX conservation measures to implement in order to extend the longevity of an area code. State commissions, as recognized by the FCC at ¶¶ 9 and 21 of the Opinion, have a unique understanding and familiarity with local circumstances, being much closer to particular in-state needs and concerns.

The circumstances in New Hampshire provide a cogent example of why it is important for the FCC to authorize state commissions to implement conservation measures early. In New Hampshire, despite the NANPA's declaration of extraordinary jeopardy, enough numbers exist to avoid area code exhaust. New Hampshire has fewer than 750,000 active wirelines in service and fewer than 1.2 million citizens. As the FCC is aware, a single area code like New Hampshire's 603 contains approximately 7,600,000 usable telephone numbers. Each NXX within an area code contains 10,000 telephone numbers. The problem is that NXXs are assigned in full 10,000 number blocks. As a result of current practices, there may be as many as 1.5 to 3 million unused numbers in the 603 area code. Furthermore, assigned NXXs may contain at least as many unused numbers because competitive providers obtain NXXs in multiple if not all New Hampshire exchanges and serve far fewer customers. Bell Atlantic, the Regional Bell Operating Company, serves many customers but provides multiple NXXs per community.² Thus, a large quantity of unused numbers within untainted number blocks exists for use in number conservation efforts and when number pooling becomes technically feasible in the near future.

Introducing new area codes causes significant disruption and expenses to consumers. Businesses incur high costs to change company letterhead, documents, vehicles, and advertisements. All citizens undergo a period of adjustment. Requiring consumers to incur these expenses unnecessarily when measures are available to avoid them conflicts with the NHPUC's

²For example, Portsmouth, a city of 27,000, has six NXXs using up 60,000 numbers.

state legislative mandate to protect consumer interests. The NHPUC therefore urges the FCC to take advantage of our and other states' ability to protect our consumers' interests.

The NHPUC has been working hard for several years to insure the development of local competition. The NHPUC has no motive to use numbering resources anti-competitively and can implement number conservation efforts non-discriminatorily. Conversely, industry members, to whom the FCC has given authority to establish conservation measures, may have reason to use the resources anti-competitively. Some industry members are already well-supplied with unused numbers and will strive to keep that advantage. For that reason, it is unproductive to tie the state commission's hands for a period of time during which the industry is to reach consensus on rationing measures. Consumers will be better served by state initiated action, at least until national efforts are established.

The rational allocation of numbering resources prior to establishing new area codes would benefit both the development of competition and consumers. Requiring states to move forward with the implementation of a new area code before taking steps to conserve the existing area code will, in practice, impede the FCC's pro-competitive goals and unnecessarily harm consumers.

B. The FCC's Concerns can be addressed, without denying states the opportunity to protect state interests, by defining the parameters for approved number pooling and other conservation efforts.

The FCC Opinion indicates approval of a number pooling trial currently being conducted by Illinois. While granting Illinois continued authority because "the Illinois trial does not interfere with the operation of the guidelines that the Commission has established for

traditional area code relief,”³ the FCC’ Opinion denied other states permission to implement similar trials of conservation methods that similarly do not interfere with the guidelines. Instead, the FCC Opinion required states to apply to the FCC’s Common Carrier Board for such permission.⁴ By thus establishing an FCC proceeding for each state that wants to protect its citizens from unnecessary area code exhaust, the FCC has missed an opportunity to take advantage of state expertise and at the same time creating the uniformity and parity it deems necessary. The FCC, under its exclusive jurisdiction over numbering, could have enumerated for states the acceptable number conservation methods and manner of implementation.

The FCC has the information and ability to set the parameters for state number conservation efforts prior to NANPA’s declaration of jeopardy. Doing so would assist consumers without endangering competition or the smooth functioning of telecommunications services nationally. Therefore, the NHPUC requests the FCC to authorize state commissions to impose NXX conservation measures that, like the Illinois efforts, will not interfere with the FCC’s traditional area code relief guidelines.

Furthermore, enabling states to participate in the efficient use of NXXs will insure that states act in a timely fashion to implement area code relief. The fact that forecasting will reflect efficient use of NXXs rather than inefficient waste will not impair the accuracy of the forecasting. States will participate in traditional area code relief planning, as they have in the past, but with confidence that they are meeting their responsibilities to state consumers.

C. The Opinion is overbroad in its blanket denial of state authority to reclaim NXX codes.

³Opinion at ¶30.

⁴*Id.* at ¶31.

Paragraph 24 of the Opinion states that "state commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator." While it appears from the context of the Opinion that this statement is limited to code conservation-related orders, the language used in the Opinion is very broad and could be interpreted to mean that a state commission may never order the return of a code. Such a conclusion would unreasonably limit a state's ability to enforce its own rules and regulations regarding the provision of service within its boundaries. Carriers do sometimes wrongfully obtain and/or use numbering resources to the detriment of other properly certified and operating carriers and hence to the detriment of competition. The NHPUC agrees with the Maine PUC (MPUC) that state commissions need authority to enforce state rules and regulations regarding the provision of services within the state.

The NHPUC also agrees with the MPUC that the Industry Number Committee's Central Office Code Administration Guidelines (Industry Guidelines), which the Commission relies on, do not guarantee an effective and fair code allocation process. Pursuant to the Industry Guidelines, cases of improper acquisition and misuse of NXXs will be subject to a lengthy process involving industry consensus prior to referral to a regulatory body. The NHPUC contends that industry consensus in a newly competitive industry will be hard won, if at all, and very time consuming. The Industry Guidelines set no time lines so there is no guarantee that the NANPA would even get involved for months.

In the post-Act era, a state commission's role is often that of arbitrator between competitive carriers, rather than that of rate regulator. State commissions should be allowed to perform that function in regard to numbering infractions because states are in the best position to

police numbering infractions. The Industry Guidelines are incapable of performing that function effectively. For example, in New Hampshire as in Maine, carriers obtain many more NXX code telephone numbers than they intend to serve. For example, one carrier applied for 23 NXXs, i.e. for 230,000 telephone numbers, merely to enable start-up operations in the 23 local calling areas where operation is intended. Fortunately, the request appears to have been made subsequent to the NANPA jeopardy declaration and thus the wasteful allocation of numbers will not occur, but this example clearly demonstrates the problem of waste.

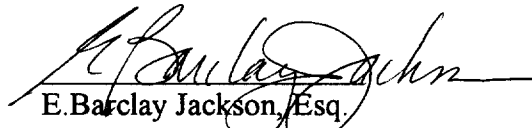
There are also New Hampshire carriers which obtain NXXs in order to serve Internet Service Providers customers toll free. These anti-competitive mis-uses of numbering resources must not be allowed to continue unabated during a prolonged industry process. The NHPUC contends that states are able to address the problems more quickly and more efficiently than NANPA and consistent with the federal aims. Therefore, the NHPUC requests that the FCC clarify the language in ¶24 and delegate the necessary additional state authority in the following limited manner. The NHPUC requests authority to reclaim NXXs obtained or used in violation of state rules, regulations, and policies.

III. CONCLUSION

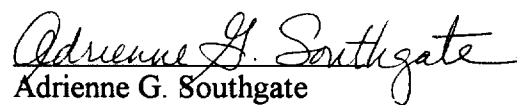
The NHPUC has taken steps to assist the industry to reach voluntary consensus regarding a plan for number conservation measures in New Hampshire. On December 22, 1998, the NHPUC will host an industry meeting for the purpose of achieving voluntary participation in such a plan. We anticipate in submitting that plan to the FCC for review and appropriate delegation of authority to implement the plan in the near future. Nonetheless, for the reasons described above, the NHPUC respectfully requests that the FCC (1) strike that portion of its

Opinion which restricts states from imposing number conservation methods until after a final decision is made regarding the implementation of a new area code, (2) delegate the necessary authority to states for implementing NXX conservation measures that do not interfere with the FCC's guidelines, and (3) clarify ¶ 24's overbroad language in order to permit states to reclaim improperly obtained or used codes.

Respectfully submitted,



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